

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: BellSouth Telecommunications, Inc.'s Entry
into Long Distance (Interlata) Service in
Tennessee Pursuant to Section 271 of the
Telecommunications Act of 1996

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EXECUTIVE SECRETARY
DOCKET NO. 97-00309

REPLY IN SUPPORT OF MOTION TO COMPEL OF
CONSUMER ADVOCATE AND PROTECTION DIVISION
OF THE OFFICE OF ATTORNEY GENERAL

The Consumer Advocate and Protection Division of the Office of Attorney General ("Attorney General") files this Reply pursuant to the Hearing Officer's Initial Order Resolving Discovery Disputes at pages 11-12.

BellSouth Telecommunications, Inc. ("BellSouth") has two objections to each and every data request of the Attorney General. In order to respond as briefly as possible to BellSouth's arguments, the Attorney General will first state BellSouth's two main objections, then proceed to demonstrate why these objections have no merit. In addition, the Attorney General will address certain specific data requests and establish why BellSouth's objections to these requests are groundless.

BELLSOUTH'S MAIN OBJECTIONS

1. Two Main Objections

BellSouth's two main objections to the Attorney General's requests are as follows: (a) "...that it is not relevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence"; and (b) "the FCC does not consider earnings or loss of revenue in its assessment of the level of local competition. Consequently, the information

is not relevant to this proceeding."

ATTORNEY GENERAL'S RESPONSE

Neither objection by BellSouth has merit. The FCC's very first and precedent-setting decision allowing an incumbent into the long-distance market came in the FCC's approval of Bell Atlantic's petition to offer long-distance service in New York. In *Memorandum Opinion and Order CC Docket No. 99-295(FCC 99-404)*, the FCC concluded at Paragraph 244:

"First, we note that in the *Local Competition First Report and Order*, the commission held that, while TELRIC consists of "methodological principles" for setting prices,⁷⁸⁸ states retain flexibility to consider 'local technological, environmental, regulatory, and economic conditions.'⁷⁸⁹ In reviewing state pricing decisions in the context of section 271 applications, we will not reject an application because isolated factual findings by a commission might be different from what we might have found if we were arbitrating the matter under section 252(e)(5). Rather, we will reject the application only if basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."

Because the FCC recognizes a state's flexibility to consider "local technological, environmental, regulatory, and economic conditions" when the state makes TELRIC decisions, surely the FCC recognizes the state's right to consider the very same items when the state is called upon to form an opinion on a petitioner's section 271 application. Furthermore, there is abundant evidence that the Tennessee Regulatory Authority ("TRA") has made such considerations. In its 2001 *Report to the Tennessee General Assembly*, the TRA said: "Virtually every decision made by the TRA must consider state laws, federal laws, decisions by the FCC and the courts and the public interest." Therefore, it is well within the scope of the Attorney General's discovery requests to have made requests that address the public interest and it is BellSouth's obligation to be responsive to these requests. Thus, BellSouth's objection that the

Attorney General's discovery requests are "...not relevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence" has no merit whatsoever.

2. Objection to Requests Regarding Earnings and Loss of Revenue

BellSouth's objection that "the FCC does not consider earnings or loss of revenue in its assessment of the level of local competition" is completely without merit. Bell Atlantic's 271 Petition referred to above was granted in part because the FCC's public-interest analysis established a strong and direct tie between the petitioner's profit levels in New York and the petitioner's liability for not maintaining an open market after 271 authority is received. The FCC's discussion and conclusion is quoted here to assure the TRA that the FCC carefully considers a company's earnings in a particular state when evaluating a section 271 application:

"433. Where, as here, a BOC relies on performance monitoring and enforcement mechanisms to provide assurance that it will continue to maintain market-opening performance after receiving section 271 authorization, we will review the mechanisms involved to ensure that they are likely to perform as promised.¹³²⁵ While the details of such mechanisms developed at the state level may vary widely, we believe that we should examine certain key aspects of these plans to determine whether they fall within a zone of reasonableness, and are likely to provide incentives that are sufficient to foster post-entry checklist compliance. In this instance, we believe that the enforcement mechanisms developed in New York will be effective in practice."

and

"436. Nonetheless, we recognize that the level of potential liability under a performance enforcement plan matters, as a plan with relatively low potential liability would be unlikely to provide meaningful incentives to maintain service quality levels. We believe it is useful to compare the maximum liability level to Bell Atlantic's net revenues derived from local exchange service - after all, it is primarily its local service profits that Bell Atlantic would have a theoretical incentive to protect by discriminating against competing local carriers.¹³³¹ A 'Net Return' figure developed using ARMIS data, which represents total operating

revenue less operating expenses and operating taxes, is a reasonable approximation of total profits derived from local exchange service.¹³³² In 1998, Bell Atlantic reported a Net Return of \$743 million in New York: \$269 million would represent 36% of this amount. On the basis of this comparison, we conclude that \$269 million represents a substantial percentage of Bell Atlantic's profits, and agree with the New York Commission that "the dollars at risk in the [APAP] are substantial and should deter [Bell Atlantic's] incentive to provide discriminatory service."¹³³³

Memorandum Opinion and Order CC Docket CC Docket No. 99-295 (FCC 99-404) at Paragraph 433 and 436.

Clearly, the knowledge of the petitioner's state-specific revenue and state-specific profits were and are vital to assessment of a section 271 application. Thus, BellSouth's objections should not be allowed to stand and deny the Attorney General's discovery Items 1 and 2, which ask about BellSouth's profits and revenues in Tennessee.

3. Objections Regarding Prices of BellSouth's Services

In Item No. 3, the Attorney General made the following request: In a spreadsheet, provide a list of services currently offered by BellSouth in Tennessee and the current price for each service. If any service now has a price that is lower than it was in 1998, 1999, or 2000, indicate what the old price was, the year it applied to the service, and provide the ratio of the old price to the current price.

This request asks BellSouth to indicate the current prices for its service and to indicate if any current price is less than the prevailing price in the past three years. This request is directly in line with the FCC's reasoning *In Memorandum Opinion and Order CC Docket No. 99-295(FCC 99-404)*

"1. In this Order, we grant Bell Atlantic's application to enter the interLATA long distance market in New York State based on our conclusion that Bell Atlantic has

taken the statutorily required steps to open its local exchange and exchange access markets to competition. The market opening actions by the New York Commission and Bell Atlantic underlying our decision bring the telecommunications industry one step closer to realization of the full pro-competitive goals of the 1996 Telecommunications Act,¹ and promise substantial benefits for consumers in the form of lower rates and innovative service packages." [Emphasis added]

BellSouth has operated under the Telecommunications' Act of 1996 ('Act') framework since February 1996. Surely the company has the ability to indicate if it has lowered its prices as a consequence of the Act, since, in the FCC's own words, the Act "promises substantial benefits for consumers in the form of lower rates and innovative service packages." But the FCC is not the only regulatory body hoping that consumers get lower prices for telecommunication services. In its 2001 *Report to the Tennessee General Assembly*, the TRA expressed the same opinion: "It is our hope that telecommunications competition will one day provide all Tennesseans with competitive choices as well as lower prices for telecommunications services [at xii]." Clearly it is the public interest for BellSouth to divulge price reductions, to indicate the amount of the reduction, and to identify which customer groups have received the reductions.

4. Objections Regarding Personnel and Equipment Information

In Items 12 and 13, the Attorney General asked for information regarding the effect of competition on BellSouth's personnel and equipment purchases, i.e., has competition caused a change in personnel or equipment. Request Nos. 12 and 13 provide as follows:

12. "Has competition in Tennessee caused BellSouth to delay equipment purchases or discharge personnel? If the answer is 'yes' provide the dollar value of the equipment and the dollar value of the compensation that was avoided by discharging the personnel.

13. Has competition in Tennessee caused BellSouth to make equipment purchases or add personnel? If the answer is 'yes' provide the dollar value of the equipment and the dollar value of the compensation for adding the personnel.

Regarding the Attorney General's discovery requests 12 and 13, the FCC's order for Bell Atlantic entry into New York's long-distance market provides ample evidence that personnel and resource changes are directly related to assessment of a section 271 application:

"102. Competing carriers need information about and specifications for an incumbent's systems and interfaces in order to develop and modify their systems and procedures to access the incumbent's OSS functions. ²⁷⁷ Thus, in the *Ameritech Michigan Order*, the Commission determined that in order to provide nondiscriminatory access to OSS, a BOC must first demonstrate that it 'has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and . . . is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them.' ²⁷⁸ By showing that it adequately assists competing carriers to use available OSS functions, a BOC provides evidence that it offers an efficient competitor a meaningful opportunity to compete. ²⁷⁹ As part of this demonstration, the Commission will give substantial consideration to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time. ²⁸⁰ [Emphasis Added]

and

"277. Through September 1999, Bell Atlantic has provisioned to competing carriers 200,000 loops, including approximately 50,000 stand-alone loops and 150,000 loops provided as part of platforms of network elements. ⁸⁹¹ Nearly 150,000 of these loops, including approximately 15,000 stand-alone loops and 130,000 platform loops, were delivered to competing carriers during the period from May through September, 1999. ⁸⁹² Bell Atlantic represents that it can easily meet the current commercial demand for unbundled local loops and that it will, as needed, add personnel and resources to meet any further increases in commercial demand. ⁸⁹³"

and

"¹¹⁰³ For example, beginning in September 1999, Bell Atlantic increased the personnel dedicated to monitoring and correcting database entries. Bell Atlantic Lacouture/Troy Reply Decl. at Paragraph 157." [Emphasis Added]

Accordingly, BellSouth's objections to the Attorney General's discovery requests 12 and 13 regarding personnel and equipment changes have no merit.

5. Objections Regarding Competition's Impact On Stock Price

In Item 14, the Attorney General asked for information regarding the effect of competition on BellSouth's stock price. Request No. 14 provides as follows:

14. Has competition affected the price of BellSouth's common stock? If the answer is 'yes', provide any study or report prepared by the company or its consultants, to support your answer.

The importance of a company's stock price as an indicator of a competitive, open market is well documented in the U.S. Department of Justice's review of Bell Atlantic's Section 271 application in New York. According to the *AFFIDAVIT OF MARIUS SCHWARTZ*:

"174. *Signal of entrants' confidence.* Competitors' willingness to commit significant irreversible investments to the market (sunk costs) signals their perception that the requisite cooperation from incumbents has been secured or that any future difficulties are manageable. Since competitors are knowledgeable about the industry and have an obvious stake in making competition work, their actions speak loudly⁶² Indeed, firm plans to commit substantial investments to the market could be a better indicator than observing a more limited amount of competition already in place. (It is important, however, that the plans be firm, e.g., involving contracts for specialized equipment that entail substantial penalty clauses for cancellation. There is a long record of plans to enter local phone service that have been perennially revised, such as by the cable companies to cite one example.)"

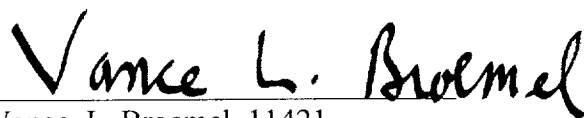
and

"⁶² In general, it is instructive to observe the actions of parties that have a direct interest in the outcome, because they are likely to have better information than outsiders or find it in their incentives to obtain such

information. This principle of “follow the money” has led economists to place substantial weight on how the stock market interprets various events.”

Clearly, competition, if it exists, would be expected to have an impact on the Bellsouth’s stock price. Accordingly, Bellsouth is obliged to divulge any studies it has performed or that its consultants have performed regarding the impact of competition on the company’ stock price.

Respectfully submitted,

A handwritten signature in black ink that reads "Vance L. Broemel". The signature is written in a cursive style with a horizontal line underneath the name.

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CERTIFICATE OF SERVICE

I hereby certify that on October, 2001, a copy of the foregoing document was served on the parties of record via US Mail, addressed as follows:

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